In our judgment, the conclusion of the learned judge was right and the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Lim Ganesh & Liu; Khattar Wong & Partners.*

Reported by *Ng Sheau Jiuan*

Standard Chartered Bank v Central Provident Fund Board

COURT OF APPEAL (SINGAPORE) – CIVIL APPEAL NO 80 OF 1986
WEE CHONG JIN CJ, THEAN AND CHUA JJ
18 JANUARY 1989

Civil Procedure – Orders of Magistrates' Courts for payment of arrears of CPF contributions under s 37 of Central Provident Fund Act (Cap 36, 1985 Ed) – Garnishee proceedings instituted to enforce orders – Whether orders constituted 'judgments or orders for payment' within meaning of O 49 r 1(1) of the Rules of the Supreme Court 1970 – Orders are criminal in nature and not equivalent to civil judgments or orders – O 49 not applicable to criminal proceedings – Central Provident Fund Act (Cap 36, 1985 Ed), ss 37(1) & 40 – Rules of the Supreme Court 1970, O 49 r 1(1)

Civil Procedure – Order of Magistrates' Court given in the exercise of its civil jurisdiction – Enforcement in High Court – Order may only be enforced upon application of person who has obtained the order and upon Magistrates' Court forwarding order to High Court with request for execution – Non-compliance with statutory requirements as stated in ss 46 and 54 of Subordinate Courts Act (Cap 231, 1985 Ed) goes to root of enforcement proceedings – Fundamental defect in procedure rendering proceedings a nullity – Non-compliance not a mere irregularity capable of cure under O 2 of the Rules of the Supreme Court 1970

K, a company required under the Central Provident Fund Act (Cap 36, 1985 Ed) ('the Act') to pay to the Central Provident Fund Board ('the Board') contributions for its employees, was in arrears of such contributions. The Board brought summonses in the Magistrates' Courts against K. K pleaded guilty to the charges, was convicted and fined. The Magistrates' Courts also ordered K to pay the arrears of the contributions under s 37(1) of the Act. However, the sums were not paid and the Board obtained warrants to levy any property belonging to K to satisfy the sums due. K was, at the material time, doing some work for T under certain contracts in respect of which certain payments were due to K. K gave an irrevocable letter of authority to T to pay K's bank, SCB (the appellant bank), these sums due.

Subsequently, the Board instituted garnishee proceedings in the High Court to enforce the orders of the Magistrates' Courts by garnishing the payments due to K in the hands of T. The court made a garnishee order nisi to that effect.

When a winding-up petition was presented against K by a creditor of K, the appellant bank (an interested third party by reason of the alleged assignment effected by the irrevocable letter of authority) took out an application under O 49 r 6 of the Rules of the Supreme Court 1970 ('the Rules') for an order, inter alia, that the garnishee order be discharged and that T be directed to pay it (the appellant bank) the sums found due and payable. The application was heard by the assistant registrar who ruled that the orders of the Magistrates' Courts for payment of arrears did not constitute 'judgments or orders for payment' within the meaning of O 49 r 1(1) of the Rules. The Board appealed to the High Court who allowed the appeal and ordered that the garnishee order be restored pending the making of a winding-up order against the company. The appellant bank appealed to the Court of Appeal. The essential question for decision is whether the four orders of the Magistrates' Courts for payment of arrears of contributions under s 37 of the Act are 'judgment(s) or order(s) for payment of money' within the meaning of O 49 r 1(1) of the Rules of the Supreme Court 1970 ('the Rules') which lays down the procedure for garnishee proceedings in the Supreme Court.

Held, allowing the appeal:

(1) The presentation for winding up should not preclude the learned judge from adjudicating on the issue relied upon by the appellant bank, namely, whether the Board was entitled to institute garnishee proceedings in respect of the four orders of the Magistrates' Courts. It is true that a judgment creditor who has not completed the enforcement of his judgment debt before a petition for winding up of the company is presented may be forced to prove in the liquidation as an unsecured creditor for his money but this does not mean that the court may not determine whether the mode of enforcement employed by the judgment creditor is one which is, in the first instance, available to him.

(2) The essential character of a judicial order is to be determined by reference to the nature of, and the procedure adopted for, the proceedings, that is to say, whether the proceedings are in the nature of civil or criminal proceedings.

(3) In the present case, the relevant orders were made by the Magistrates' Courts in the exercise of their criminal jurisdiction upon convictions for criminal offences under s 34 of the Act. The orders were, in form, criminal and are in the category of fines and penalties imposed for criminal offences under s 34 of the Act. Indeed, for the purposes of recovery, s 37 treats the orders as if they were fines. That the section gives a summary process for recovery of the amount due to the Board cannot convert the character of the order – which is stamped with a criminal character – into a civil debt or order.

(4) By s 40 of the Act, 'any sum due to the Fund may be sued for and recovered by the Board under the Government Proceedings Act as if it were a debt due to the government'. The section contemplates ordinary civil action or proceeding by the Board to recover any sum due and to enforce any judgment or order obtained therein; and points to a clear distinction drawn in the Act between civil and criminal procedure. To treat an order under s 37 as equivalent to a civil judgment or order for the purposes of O 49 would, in our view, render the express provision of s 40 redundant. Reading s 40 with s 37, it is only upon an entry of a judgment or order in pursuance of a civil proceeding that the Board may be able to avail itself of the process of enforcement of a money judgment or order.

(5) Even on the assumption that the relevant orders were orders of the Magistrates' Courts in the exercise of their civil jurisdiction, no execution proceedings could have been instituted in the High Court as under s 46 read with s 54 of the Subordinate Courts Act (Cap 321, 1985 Ed), an order of the Magistrates' Court in the exercise of its civil jurisdiction may only be enforced in the High Court upon an application of the person who has obtained the order and upon the Magistrates'

Court forwarding the order to the High Court with a request for execution. In the present case, the Board made no such application and no request for execution in the High Court was issued.

(6) Non-compliance with statutory requirement, going as it does to the root of the enforcement proceedings issued in the High Court, constitutes so fundamental a defect in procedure that it renders the entire proceedings in which it occurs, and any order made therein, a nullity.

Case referred to

1 *R* v *Marlow (Bucks) Justices, ex parte Schiller* [1957] 2 All ER 783 (refd)

Legislation referred to

Central Provident Fund Act (Cap 36, 1985 Ed) ss 34, 37, 40
Rules of the Supreme Court 1970 O 1 r 2(2), O 2, O 49 r 1(1)
Subordinate Courts Act (Cap 321, 1985 Ed) ss 46, 54

Appeal from: Originating Summons No 397 of 1986 (High Court, Singapore)

Lee Mun Hooi for the appellant.
M Karthigesu (*Richard Ang* with him) for the respondent.

Cur Adv Vult

Wee Chong Jin CJ (delivering the judgment of the court): This appeal from the order of Wahab Ghows J dated 18 Septemer 1986 arises from an application by the appellants, Standard Chartered Bank ('Bank'), seeking to discharge a garnishee order nisi dated 3 April 1986, obtained by the respondents, Central Provident Fund Board ('the Board'), to enforce four orders of the Magistrates' Courts for payment of arrears of contributions by Kai Chin (Pte) Ltd ('Kaichin'). At the conclusion of the hearing, we allowed the appeal and set aside the order of Wahab Ghows J, indicating that we would give our reasons at a later date. This we now do.

Kaichin, a company required under the Central Provident Fund Act (Cap 36, 1985 Ed) ('the Act') to pay to the Board contributions for its employees, were in arrears of such contributions. The Board brought three summonses in the Magistrates' Courts – CPFB 00079/85, CPFB 018198/85, and CPFB 04339/85 – against Kaichin under s 34 (now s 38) of the Act. These three summonses came before the Magistrates' Courts on 10 May 1985, 6 September 1985 and 20 December 1985 respectively. In all three summonses, Kaichin pleaded guilty to the charges and were convicted and fined. The Magistrates' Courts, before which Kaichin were convicted, further ordered that Kaichin pay the arrears of the contributions. It is relevant to note that one of these orders allowed the arrears to be paid in six instalments with effect from 3 January 1986. The sums due under these three orders amounted to $127,279.01. The sums due not being paid, the Board applied under s 224 of the Criminal Procedure Code (Cap 68, 1985 Ed) and obtained three warrants to levy, which, in substance, authorized the Registrar, Subordinate Courts, to distrain by seizure and if necessary, sale of any property belonging to Kaichin to satisfy the sums due.

Kaichin were, at the material time, doing some work for Telecommunication Authority of Singapore ('Telecoms') under certain contracts in respect of which it appeared that payments of a balance sum of $22,435.21 was due to Kaichin as at 6 September 1985 and a further sum of $147,251.40 was due to Kaichin on 2 April 1986.

At the material time, Kaichin was a customer of the Bank and had overdrawn on an overdraft facility granted by the Bank. On 6 September 1985, Kaichin gave an 'Irrevocable Letter of Authority' to Telecoms. The letter, which was acknowledged by Telecoms on 12 September 1985, was in the following terms:

> *Irrevocable Letter of Authority*
>
> We hereby authorize you to pay to our account with Standard Chartered Bank, Crosby House, 71 Robinson Road #01-01 Singapore 0106, the sum of S$22,435.21 being the balance of retention from Tender Number AMB/T/84/067 and a further sum of S$181,034.90 due and payable from your existing P/O No 44811 – Tender No AME/T/85/027 with us.
>
> This letter of authorization is irrevocable. The aforesaid amounts are payable to our account with Standard Chartered Bank (Account No 0203039610) without any responsibility on your part for negligence or otherwise.
>
> Kindly acknowledge receipt by signing the copy of this letter and returning it to Standard Chartered Bank accordingly.

On 17 January 1986, by Originating Summons No 75 of 1986, the Board instituted garnishee proceedings in the High Court to enforce the three orders of the Magistrates' Courts for the payment of the sum of $127,279.01 by garnishing the payments due to Kaichin in the hands of Telecoms. On the same day (17 January 1986), the court made a a garnishee order nisi to that effect.

On 21 February 1986 (the day fixed for further consideration of the order nisi) upon the application of the Board who also mentioned on behalf of Telecoms, the garnishee order was, by consent, made absolute for the sum of $29,240.68. This sum of $29,240.68 was paid by Telecoms to the Board on 14 April 1986.

On 7 March 1986, the Board brought a fourth summons, CPFB 00318/86, in the Magistrate's Court against Kaichin for arrears of contributions amounting to $35,996.80. Kaichin pleaded guilty to the charge and were convicted and fined. The Magistrate's Court further ordered that Kaichin pay the arrears of contributions within six weeks of the order. On 21 March 1986, the arrears not being paid, the Board applied under s 224 of the Criminal Procedure Code and obtained the issue of a warrant to levy. The sums due to the Board now totalled $134,205.13.

On 3 April 1986, by Originating Summons No 392 of 1986, the Board instituted garnishee proceedings in the High Court to enforce the four orders of the Magistrates' Courts and the garnishee order absolute dated 21 February 1986 in Originating Summons No 75 of 1986 by garnishing the payments due to Kaichin in the hands of Telecoms. On the same day, the court granted a garnishee order nisi in the following terms:

> (1) All debts due or accruing due from Telecommunication Authority of Singapore, the abovementioned garnishee, to the abovementioned judgment debtor be attached to answer four orders in the Subordinate Courts and an order of court in the High Court recovered against the said judgment debtor by the abovenamed judgment creditor on the 10th day of May 1985, the 6th day of September 1985, the 20th day of December 1985, the 7th day of March 1986 and the 21st day of February 1986 respectively in Summons Case Nos 00079/85, 01898/85, 04339/85 and 00318/86; and Originating Summons No 75 of 1986 respectively ordering payment by the said judgment debtor to the abovenamed judgment creditor of the total sum of $207,870.59 together with the costs of the garnishee proceedings on which orders the sum of $134,205.13 remains due and unpaid.

On 3 July 1986, a petition for the winding up of Kaichin was presented by a creditor of Kaichin, Bank of America Trust and Savings Association, which petition was scheduled to be heard on 24 October 1986.

On 22 July 1986, the Bank, an interested third party by reason of the alleged assignment effected by the 'Irrevocable Letter of Authority' referred to earlier, took out an application under O 49 r 6 for, inter alia, the following orders:

> (1) Standard Chartered Bank be directed to add or join as a party to the proceedings herein;
> (2) garnishee order absolute dated 21 February 1986 obtained under Originating Summons No 75 of 1986 and the garnishee order to show cause under the Originating Summons No 397 of 1986 herein be discharged;
> (3) Telecommunication Authority of Singapore be directed to pay to Standard Chartered Bank the assigned sums of $203,470.11 or such sums found due and payable.

A similar application was taken out by the Bank in Originating Summmons No 75 of 1986, which application, we were told, was adjourned sine die pending the outcome of this appeal.

On 21 August 1986, the application was heard by the assistant registrar. At the hearing, the Bank relied on an issue, which, if determined in favour of the Bank, would be sufficient to dispose of the matter, namely, that the four orders of the Magistrates' Courts for payment of arrears did not constitute 'judgment(s) or order(s) for payment' within the meaning of O 49 r 1(1) of the Rules of Supreme Court 1970 ('the Rules'). The argument was accepted by the assistant registrar who ordered that the garnishee order nisi dated 3 April 1986 be discharged on the ground that 'there is no 'judgment or order for payment' within O 49 r 1'.

The Board appealed to the judge-in-chambers. The appeal came before Wahab Ghows J on 18 September 1986. After hearing arguments, he made the following order:

> Proceedings stayed pending the making of a winding-up order against the judgment debtor with liberty to apply. To restore the status quo the appeal is allowed. Costs in the cause.

Upon a request for further argument by the Bank, the learned judge heard further arguments on 2 October 1986 and clarified his order as follows:

> The order of court should read: 'The appeal be allowed and the order nisi herein dated 3 April 1986 be restored pending the making of a winding-up order against the company.'

The learned judge gave no reason for his decision, but it is apparent that the learned judge made no adjudication on whether the order nisi dated 3 April 1986 should be discharged on the ground which found favour with the assistant registrar. The judge was concerned only that the 'status quo' be preserved pending the making of the winding-up order against Kaichin which order was subsequently made on the hearing of the winding-up petition on 24 October 1986. With respect to the learned judge, the presentation of the petition for winding up did not preclude him from adjudicating on the issue relied upon by the Bank, namely, whether the Board was entitled to institute garnishee proceedings in respect of the four orders of the Magistrates' Courts. It is true that a judgment creditor who has not completed the enforcement of his judgment debt before a petition for winding up of the company is presented may be forced to prove in the liquidation as an unsecured creditor for his money (see s 334 of the Companies Act (Cap 50)), but this does not mean that the court may not determine whether the mode of enforcement employed by the judgment creditor is one which is, in the first instance, available to him.

The procedure for garnishee proceedings in the Supreme Court is governed by O 49 of the Rules. Rule 1(1) of that Order provides:

> 1(1) Where a person (in this Order referred to as 'the judgment creditor') has obtained a judgment or order for the payment by some other person (in this Order referred to as 'the judgment debtor') of money, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as 'the garnishee') is indebted to the judgment debtor the court may, subject to the provisions of this Order and of any written law, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

By O 1 r 2(2) of the Rules, this Order, like the other Orders in the Rules, does not apply to criminal proceedings, which are governed by the Criminal Procedure Code. Order 1 r 2(2) provides:

> (2) These Rules shall not have effect in relation to proceedings of the kinds specified in the first column of the following Table (being proceedings in respect of which rules may be made under the written law specified in the second column of that Table):
>
> *Table*
>
> | *Proceedings* | *Written Law* |
> |---|---|
> | 6. Criminal Proceedings | Criminal Procedure Code |

The essential question for decision is whether the four orders of the Magistrates' Courts for payment of arrears of contributions under s 37 (now s 41) of the Act are 'judgment(s) or order(s) for payment of money' within the meaning of O 49 r 1(1).

Section 37(1) of the Act provides:

> 37(1) Any person convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding $2,500 and in the case of a second or subsequent offence to a fine not exceeding $10,000 and the court before which the conviction is had may in addition to the fine order him to pay the amount of any contributions together with any interest due thereon certified by an officer appointed by the Board in that behalf to be due from that person at the date of the conviction and the amount may be recovered according to the law for the time being in force for the recovery of fines.

The procedure for the recovery of fines is governed by s 224 of the Criminal Procedure Code:

> 224 Where any fine is imposed under the authority of any law for the time being in force then, in the absence of any express provision relating to the fine in such law, the following provisions shall apply:
>
> (a) ...
>
> (b) in every case of an offence in which the offender is sentenced to pay a fine the court passing the sentence may, at any time before the fine has been paid in full in its discretion, do all or any of the following things:
>
> ...
>
> (iii) issue a warrant for the levy of the amount by distress and sale of any property belonging to the offender.

Counsel for the Board advanced two separate, though related, propositions in support of his contention that this court should treat the order of the Magistrates' Court under s 37(1) as equivalent to a 'judgment or order for payment of money' within O 49 r 1(1). It is convenient to deal with these two propositions separately.

The first proposition was that although the first part of s 37(1), ie the imposition of a fine, is clearly penal, the second is in nature civil and provides a summary process for recovery. It was suggested that because the object of the Act, considered as a whole, is not penal but essentially civil, the magistrates' orders should be treated and enforceable as such. We could not accept the submission. The essential character of a judicial order is to be determined by reference to the nature of, and the procedure adopted for, the proceedings, that is to say, whether the proceedings are in the nature of civil or criminal proceedings. In the present case, the relevant orders were orders made by the Magistrates' Courts in the exercise of their criminal jurisdiction upon convictions for criminal offences under s 34. The orders were, in form, criminal and are in the category of fines and penalties imposed for criminal offences. Indeed, for the purposes of recovery, s 37 treats the orders as if they were fines. That the section gives a summary process for recovery of the amount due to the Board cannot, in our view, convert the character of the order – which is stamped with a criminal character – into a civil debt or order.

The second proposition advanced by counsel for the Board is that the words 'may be recovered according to the law for the time being in force for the recovery of fines' does not provide an exclusive mode of recovery, but an additional mode over and above the usual methods of enforcement available to a judgment creditor. He relied strongly on the word 'may' which, he contended, implies that the method of recovery specified in the section is only permissive and does not preclude recourse to other modes of enforcement. In our opinion, the argument is unsound. By s 40 (now s 45) of the Act, 'any sum due to the Fund may be sued for and recovered by the Board under the Government Proceedings Act as if it were a debt due to the Government.' The section contemplates ordinary civil action or proceeding by the Board to recover any sum due and to enforce any judgment or order obtained therein; and points to a clear distinction drawn in the Act between civil and criminal procedure. In our view, this serves to emphasize and reinforce the essentially criminal character of the order made under s 37. To treat an order under s 37 as equivalent to a civil judgment or order for the purposes of O 49 would, in our view, render the express provision of s 40 redundant. Reading s 40 with s 37, one is irresistibly drawn to the conclusion that it is only upon an entry of a judgment or order in pursuance of a civil proceeding that the Board may be able to avail itself of the process of enforcement of a money judgment or order.

Some support for our view can be found in the judgment of the English Court of Appeal in *R* v *Marlow (Bucks) Justices, ex parte Schiller*[1] dealing with the construction of the words 'enforceable as a civil debt' in para 4 of Schedule 3, Magistrates' Courts Act 1952, s 14. In that case, the applicant pleaded guilty to an information laid against him under the National Insurance Act 1946 alleging that he had failed to pay an insurance contribution due from him. He was fined £4 and further ordered

under reg 19 of the National Insurance (Contributions) Regulation 1948 to pay £38 arrears of national insurance contributions due from him. The applicant failed to comply with the order and the justices committed him to prison for three months for non-payment of the arrears of contributions. He applied for an order of certiorari to quash the committal order on the ground that inasmuch as the £38 arrears of contribution was enforceable only as a civil debt, the order of committal was bad in law. The Court of Appeal dismissed the application, holding that once the recovery of the sum as a penalty was ordered, the sum could no longer be described as 'enforceable as a civil debt'. Devlin J said (at p 784):

> We have been referred to several decisions on other Acts, but, in my opinion, the question turns entirely on the true construction of para 4. We are not here concerned with the essential character of the sum, but with the mode of its enforcement or recovery. The combined effect of s 54(1) and reg 19(5) is that the sum can be recovered either as a civil debt or as a penalty. But, once its recovery as a penalty has been ordered, I do not think that the sum can any longer be described as 'enforceable as a civil debt' within the meaning of para 4.

And, in relation to an argument on ultra vires (which is irrelevant for our purposes), Devlin J observed, obiter (at pp 784-785):

> Since the Act itself provides ... for its recovery as a civil debt, it is difficult to see what can be meant by its recovery on prosecution except as a penalty ...

In our opinion, therefore, the four orders of the Magistrates' Courts, being orders of a criminal character and recoverable as though they are fines, were not 'judgment(s) or order(s) or payment' for the purposes of O 49.

Our conclusion on this issue in favour of the Bank is sufficient to dispose of the appeal. There is, however, a further ground relied upon by counsel for the Bank on which, in our view, this appeal must also succeed. By s 46 read with s 54 of the Subordinate Courts Act (Cap 321, 1985 Ed), an order of the Magistrate's Court in the exercise of its civil jurisdiction may only be enforced in the High Court upon an application of the person who has obtained the order and upon the Magistrates' Court forwarding the order to the High Court with a request for execution. In the present case, the Board made no such application and no request for execution in the High Court was issued. In our view, therefore, even on the assumption that the relevant orders were orders of the Magistrates' Courts in the exercise of their civil jurisdiction, no execution proceedings could have been instituted in the High Court. Counsel for the Board urged that this non-compliance was a mere irregularity capable of cure – presumably under O 2 of the Rules of the Supreme Court. But O 2 applies only to non-compliance with the requirements of the Rules of the Supreme Court, so that non-compliance with requirements prescribed by statute do not come within that Order. In the present case, the non-compliance with the statutory requirement, going as it does to the root of the enforcement proceedings issued in the High Court, constitutes, in our view, so fundamental a defect in procedure that it renders the entire proceedings in which it occurs, and any order made therein, a nullity.

For these reasons, we allowed the appeal and set aside the garnishee order nisi dated 3 April 1986. In the circumstances, we considered that the appropriate order for costs was that the Bank be entitled to half the costs of the appeal and the court below.

Appeal allowed.

Solicitors: *Lee Bon Leong & Co*; *Tan Rajah & Cheah*; *Richard Ang & Co.*

Reported by *Ng Sheau Jiuan*

Chia Kay Heng & Anor v Chia Kim Siah & Anor

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 1020 OF 1988
CHAN SEK KEONG J
15 DECEMBER 1988

Land Law – Conveyancing – Showing good title – Defendants purchased leasehold from vendor who was previously joint tenant with deceased – Grant of letters of administration to vendor after deceased's death – Defendants gave option to purchase to plaintiffs – Plaintiffs took stand that good title had not been shown until defendants registered grant of letters of administration in Registry of Deeds – Whether proof of death by production of death certificate extract sufficient to show good title

Succession – Grant of letters of administration – Whether necessary to register grant in Registry of Deeds before good title can be shown – Deceased and vendor of leasehold held property as joint tenants – Leasehold sold to defendants – Defendants gave option to purchase to plaintiffs – Whether proof of death by production of death certificate extract sufficient to show good title

Evidence – Death of person – Death certificate or certified extract is primary evidence of person's death – Grant of letters of administration is only secondary evidence

Words and Phrases – 'As evidence of title to such land' – Registration of Deeds Act (Cap 269, 1985 Ed), s 4

The defendants were the leasehold owners of a piece of land ('the said property'). They purchased the said property from the vendor who executed an indenture of assignment in favour of the defendants as joint tenants. The indenture stated that the vendor and C, the deceased, were joint tenants of the property and after the death of C, the vendor had become solely and absolutely entitled to the land.

After the death of C, the vendor and two other persons obtained a grant of letters of administration ('the grant') and